

Introduced by Senator Steinberg

February 18, 2011

An act to add the heading of Chapter 1 (commencing with Section 57000) to, and to add Chapter 2 (commencing with Section 57030) to, Division 37 of, the Health and Safety Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

SB 763, as introduced, Steinberg. Environmental protection: California Performance Plus Program.

The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA requires the Office of Planning and Research to prepare and develop proposed guidelines for the implementation of CEQA by public agencies. CEQA requires that the guidelines contain various objectives, criteria, and procedures.

This bill would authorize the Secretary for Environmental Protection to establish programs to, among other things, recognize facilities and persons that have demonstrated a commitment to enhanced environmental performance, including at a minimum developing or initiating implementation of an environmental management system. The bill would define "environmental management system" as a comprehensive, cohesive set of policies and procedures adopted by a facility or person and used to establish environmental goals, meet and maintain those goals, evaluate environmental performance, and achieve measurable improvement in environmental performance.

The bill would require the secretary to develop guidelines and procedures for implementation of the program, including procedures for submitting applications, guidelines for annual reports, and procedures for reviewing program implementation. The bill would require for Governor's Performance Plus Awards to be awarded annually to recognize participants in the program that have demonstrated innovation in the implementation of pollution prevention practices and other efforts to reduce environmental impacts.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The heading of Chapter 1 (commencing with Section 57000) is added to Division 37 of the Health and Safety Code, to read:

CHAPTER 1. ENVIRONMENTAL REGULATION

SEC. 2. Chapter 2 (commencing with Section 57030) is added to Division 37 of the Health and Safety Code, to read:

CHAPTER 2. CALIFORNIA PERFORMANCE PLUS PROGRAM

57030. For the purposes of this chapter, the following definitions shall apply:

(a) "BDOs" means the boards, departments, and offices of the California Environmental Protection Agency.

(b) "Cal-EPA" means the California Environmental Protection Agency.

(c) "Environmental management system" means a comprehensive, cohesive set of policies and procedures adopted by a facility and used to establish environmental goals, to meet and maintain those goals, to evaluate environmental performance, and to achieve measurable or noticeable improvements in environmental performance, through planning, documented management and operational practices, operational changes, self-assessments, and management involvement and review. The term shall include, but not be limited to, any such system developed

1 in accordance with the International Organization of
2 Standardization (ISO) 14001 standards.

3 (d) “E2” means an environmental enterprise.

4 (e) “E3” means an exemplary environmental enterprise.

5 (f) “E4” means an extraordinarily exemplary environmental
6 enterprise.

7 (g) “Facility” means a manufacturing, business, agricultural, or
8 governmental site or installation involving one or more contiguous
9 buildings or structures under common ownership or management.

10 (h) “Independent third-party sustainability index” means a rating
11 system or index that includes a qualitative and quantitative point
12 system that accumulates information on the sustainable practices
13 of a facility, such as, but not limited to, Sustainability Competency
14 and Opportunity Rating and Evaluation (SCORE) or Underwriters
15 Laboratory (UL) 880.

16 (i) “Penalty mitigation” means that monetary penalties in an
17 enforcement action may be reduced or waived, and an enforcement
18 agency may elect not to refer a violation for criminal prosecution.

19 (j) “Program” means the California Performance Plus Program.

20 (k) “Record of sustained compliance” means that facility meets
21 all of the following:

22 (1) A judgment or conviction has not been entered against it,
23 or against any key personnel of the facility or any person with an
24 ownership interest in the facility, for a criminal violation of
25 environmental protection laws of the United States, the state, or
26 any other state in the previous five years.

27 (2) Has not been the cause of, nor liable for, more than two
28 significant environmental violations in the previous three years.

29 (3) Has no unresolved notices of violations or potential
30 violations of environmental requirements with Cal-EPA or one of
31 the BDOs.

32 (4) Is in compliance with the terms of any order or decree,
33 executive compliance agreement, or related enforcement measure
34 issued by Cal-EPA, one of the BDOs, or the United States
35 Environmental Protection Agency.

36 (5) Has not demonstrated in any other way an unwillingness or
37 inability to comply with environmental protection requirements.

38 (l) “Secretary” means the Secretary for Environmental
39 Protection.

1 57031. Cal-EPA may establish programs to recognize a facility
2 that has demonstrated a commitment to enhanced environmental
3 performance and to encourage innovations in environmental
4 protection.

5 57032. (a) The secretary shall establish different categories
6 of participation and the criteria and benefits for each category. The
7 categories shall include, but not be limited to, all of the following:

8 (1) An E2 facility.

9 (2) An E3 facility.

10 (3) An E4 facility.

11 (b) (1) In order to participate as an E2 facility, a facility shall
12 demonstrate all of the following:

13 (A) It is developing an environmental management system or
14 has initiated implementation of an environmental management
15 system.

16 (B) It has a commitment to pollution prevention and a plan to
17 reduce environmental impacts from its operations.

18 (C) It has a record of sustained compliance with environmental
19 requirements.

20 (2) To apply to become an E2 facility, an applicant shall submit
21 all of the following information to Cal-EPA:

22 (A) A policy statement outlining the applicant's commitment
23 to improving environmental quality.

24 (B) An evaluation of the applicant's environmental impacts.

25 (C) The applicant's objectives and targets for addressing
26 significant environmental impacts.

27 (D) The independent third-party sustainability index rating for
28 the facility.

29 (E) A description of the applicant's pollution prevention
30 program.

31 (3) A facility may participate in this program for up to three
32 years, and may apply to renew its participation at the expiration
33 of each three-year period. Incentives for an E2 facility include,
34 but are not limited to, public recognition of facility performance,
35 including the ability to use for promotional purposes a logo to be
36 developed by Cal-EPA for E2 facilities, and reduced fees.

37 (c) (1) In order to participate as an E3 facility, a facility shall
38 demonstrate all of the following:

39 (A) It has a fully implemented environmental management
40 system.

1 (B) It has a pollution prevention program with documented
2 results.

3 (C) It has a record of sustained compliance with environmental
4 requirements.

5 (2) To apply to become an E3 facility, an applicant shall submit
6 all of the following information to Cal-EPA:

7 (A) The information required for an E2 facility.

8 (B) Identification of the applicant's environmental legal
9 requirements.

10 (C) A description of the applicant's environmental management
11 system that identifies roles, responsibilities, and authorities,
12 reporting and recordkeeping, emergency response procedures, staff
13 training, monitoring, and corrective action processes for
14 noncompliance with the environmental management system.

15 (D) Voluntary self-assessments or audits.

16 (E) Procedures for internal and external environmental
17 communications.

18 (3) A facility may participate in this program for up to three
19 years, and may apply to renew its participation at the expiration
20 of each three-year period. Incentives for an E3 facilities may
21 include, but are not limited to, public recognition of facility
22 performance, including the ability to use for promotional purposes
23 a logo to be developed by Cal-EPA for E3 facilities, reduced fees,
24 reduced inspection priority, a single point-of-contact between the
25 facility and Cal-EPA, streamlined environmental reporting, reduced
26 monitoring requirements, and prioritized permit and permit
27 amendment review.

28 (d) (1) In order to participate as an E4 facility, a facility shall
29 meet the criteria for participation as an E3 facility, and shall have
30 done both of the following:

31 (A) Implemented and completed at least one full cycle of an
32 environmental management system as verified by an unrelated
33 third-party qualified to audit environmental management systems.

34 (B) Committed to measures for continuous and sustainable
35 environmental progress and community involvement.

36 (2) To apply to become an E4 facility, an applicant shall submit
37 all of the following:

38 (A) The information required to apply to become an E3 facility.

1 (B) Documentation evidencing implementation and completion
2 of at least one full cycle of an environmental management system
3 and evidencing review and verification by an unrelated third party.

4 (C) Documentation that the applicant has committed to measures
5 for continuous and sustainable environmental progress and
6 community involvement.

7 (3) A facility may participate in this program for up to three
8 years, and may apply to renew its participation at the expiration
9 of each three-year period. Incentives for a E4 facility may include
10 all of the incentives available to an E3 facility, including the ability
11 to use for promotional purposes a logo to be developed by Cal-EPA
12 for E4 facilities, as well as preferential contracting status with the
13 state, penalty mitigation, and the ability to implement alternative
14 compliance measures proposed by the person or facility and
15 approved by the appropriate board in accordance with Section
16 57035.

17 57033. (a) The secretary shall develop guidelines and
18 procedures for implementation of the program, including
19 procedures for submitting applications, which shall include a
20 reliance upon an independent third-party sustainability index;
21 guidelines for annual reports from participating persons or
22 facilities; and procedures for reviewing program implementation.

23 (b) Upon review of an application, the secretary may approve
24 or deny the facility's participation in the appropriate category
25 within the program. The denial of a facility's participation in the
26 program shall not be with prejudice or otherwise prevent
27 reapplication by the facility. If a participant fails to maintain a
28 record of sustained compliance, fails to resolve an alleged
29 environmental violation within 180 days, or fails to meet the
30 requirements or criteria for participation in the program or any
31 category within the program, the secretary may revoke or suspend
32 their participation in the program or revoke participation in a higher
33 level and approve its participation in a lower level of the program.
34 The secretary shall provide reasonable notice of the reasons for
35 the suspension or revocation and allow the participant to respond
36 prior to making a decision.

37 (c) The secretary's decision to approve, deny, revoke, or suspend
38 a facility's participation in any category of the program is
39 discretionary and shall be exempt from judicial review.

1 57034. (a) A participant shall submit an annual report in a
2 format and schedule prescribed by the secretary, which shall
3 include information on environmental performance relevant to the
4 program.

5 (b) Cal-EPA shall submit a report to the Governor and to the
6 members of the Assembly Committee on Environmental Safety
7 and Toxic Materials and the members of the Senate Committee
8 on Environmental Quality by December 1 of every even-numbered
9 year. The report shall include the information from the participants'
10 reports as well as information on the incentives that have been
11 provided and the innovations that have been developed by the
12 agency and participants.

13 (c) (1) The requirement for submitting a report imposed under
14 subdivision (b) is inoperative on December 1, 2016, pursuant to
15 Section 10231.5 of the Government Code.

16 (2) A report submitted pursuant to subdivision (b) shall be
17 submitted in compliance with Section 9795 of the Government
18 Code.

19 57035. (a) (1) To the extent consistent with federal law and
20 notwithstanding any other law, any of the BDOs may grant
21 alternative compliance measures to the regulations adopted
22 pursuant to their authorities, respectively, under Section 57033,
23 for a facility that has been accepted by Cal-EPA as meeting the
24 criteria an for E4 facility under subdivision (d) of Section 57032,
25 including, but not limited to, all of the following:

26 (A) Changes to monitoring and reporting requirements and
27 schedules.

28 (B) Streamlined submission requirements for permit renewals.

29 (C) The ability to make certain operational changes without
30 prior approval.

31 (D) Other changes that would not increase a facility's impact
32 on the environment.

33 (2) These alternative compliance measures may allow alternative
34 methods for achieving compliance with prescribed regulatory
35 standards if the facility requesting the alternative compliance
36 method demonstrates that the method will do all of the following:

37 (A) Meet the purpose of the applicable regulatory standard.

38 (B) Promote achievement of those purposes through increased
39 reliability, efficiency, or cost-effectiveness.

1 (C) Afford environmental protection equal to or greater than
2 that provided by the applicable regulatory standard.

3 (3) An alternative compliance measure shall not be approved
4 that would alter an ambient air quality standard, groundwater
5 protection standard, or water quality standard, and an alternative
6 compliance measure shall not be approved that would increase the
7 pollutants released to the environment, increase impacts to state
8 waters, or otherwise result in a loss of wetland acreage.

9 (b) Notwithstanding any other law, an alternate compliance
10 method may be approved under this section after at least 30 days'
11 public notice and opportunity for comment and a determination
12 that the alternative compliance measure meets the requirements
13 of this section.

14 (c) Nothing in this section shall be interpreted or applied in a
15 manner inconsistent with the applicable federal law or other
16 requirement necessary for the state to obtain or retain federal
17 delegation or approval of any regulatory program. Before approving
18 an alternative compliance measure affecting that regulatory
19 program, each BDO may obtain the approval of the federal agency
20 responsible for that delegation or approval of the regulatory
21 program. Any one of the BDOs may withdraw approval of the
22 alternative compliance measure at any time if any conditions under
23 which the alternative compliance measure was originally approved
24 change, or if the recipient has failed to comply with any of the
25 alternative compliance measure requirements.

26 (d) Upon approval of an alternative compliance measure under
27 this section, the alternative compliance measure shall be
28 incorporated into the relevant permits as a minor permit
29 modification with no associated fee. The permits shall also contain
30 any provisions that shall go into effect if the participant fails to
31 fulfill its obligations under the variance or is removed from the
32 program for reasons specified by the director under subdivision
33 (b) of Section 57033.

34 57036. The Governor's Performance Plus Awards shall be
35 awarded each year to recognize participants in the program that
36 have demonstrated extraordinary leadership, innovation, and
37 commitment to implementation of pollution prevention practices

- 1 and other efforts to reduce environmental impacts and improve
- 2 California's natural environment.

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